

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

January 4, 2005

OFFICE OF
MANAGING DIRECTOR

Paul Goode
General Manager
Swisscom North America, Inc.
2001 L Street, N.W.
Washington, D.C. 20036

Re: FY 2004 Regulatory Fee
Fee Control No. 00000RROG-04-072
Bill No. 0420000334

Dear Mr. Goode:

This is in response to your request filed on behalf of Swisscom North America, Inc. (Swisscom) for waiver of the late payment penalty associated with its fiscal year (FY) 2004 regulatory fees. Our records reflect that we have received \$69,930.00 for Swisscom's FY 2004 regulatory fees, but that we have not yet received Swisscom's late payment penalty of \$17,482.50.

By way of explanation, you state in your request that Swisscom's late payment was due to a new 2004 deadline for the payment of the annual regulatory fees and no prior receipt of written notification of the deadline change. You state that Swisscom is not invoiced directly for the annual regulatory fee but must fill out the Form 159 and submit this to the FCC with its payment. You claim that in 2003 you received a public notice from the FCC in the mail indicating the regulatory fee due date but that you did not receive any notice of the new schedule or the 2004 fee date.

The Commission takes great care to inform its licensees of the due dates, amounts of the fees, and payment methods on its web site, www.fcc.gov. For the FY 2004 regulatory fees, the Commission timely released and posted several Public Notices and news releases on its web site that informed licensees of the August 19, 2004 deadline. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, FCC 04-146 (released June 24, 2004) (FY 2004 Fee Order); Public Notice, *FY 2004 Regulatory Fees Due No Later Than August 19, 2004*, (July 2, 2004); FCC News, *Official FY 2004 Regulatory Fee Payment Window Opens Tomorrow - Fees Due No Later than August 19* (Aug. 9, 2004) (reminding of deadline and stating that Commission would begin aggressive effort to collect fees, including 25 percent penalty, beginning August 20, 2004); Public Notice, *Deadline for Filing FY 2004 Regulatory Fees*, DA 04-2549 (Aug. 18, 2004).

As a Commission licensee, Swisscom is charged with the responsibility to familiarize itself with the Commission's rules and requirements. As explained in the FY 2004 Fee Order, the Commission no longer disseminates public notices through surface mail. As indicated above, these notices are routinely posted on the Commission's website. Therefore, Swisscom's lack of familiarity with the Commission's rules governing and public notices concerning regulatory fee payments does not mitigate or excuse

Paul Goode, General Manager

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Swisscom's failure to pay its FY 2004 regulatory fee in a timely manner. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances. *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970). Furthermore, the Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. 47 U.S.C. §159(c).

We find that Swisscom did not meet its obligation to file its regulatory fee to be received by the Commission no later than August 19, 2004, the final date of the regulatory fee filing window for FY 2004. We therefore deny your request for waiver of the penalty for late payment of the fiscal year 2004 regulatory fee.

Your late payment penalty in the amount of \$17,482.50 for FY 2004 is now due. The fee must be received, together with a copy of Bill No. 0420000334, within 30 days from the date of this letter. If you have any questions concerning this matter please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer